

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
EASTERN WASHINGTON REGION
STATE OF WASHINGTON

JOHN R. PILCHER, an individual, and JRP
LAND, LLC., a Washington limited liability
corporation,

Petitioners,

v.

CITY OF SPOKANE, a Washington municipal
corporation, and WASHINGTON STATE
DEPARTMENT OF ECOLOGY, a Washington
state agency,

Respondents.

Case No. 10-1-0012

**ORDER ON MOTION TO
SUPPLEMENT THE RECORD**

I. INTRODUCTION

On December 21, 2010, the Board received Petitioners' Motion to Supplement the Record. On December 22, 2010, the Board received Respondent Ecology's Objection to Petitioners' Motion to Supplement the Record. On December 27, 2010, the Board received Petitioners' Reply to Ecology's Objection to Motion to Supplement the Record. The City of Spokane has not commented on this motion.

Petitioners ask this Board to Supplement the Record in this case with four additional documents, attached to or referenced in Petitioners' Motion to Supplement. Ecology objects to supplemental Item 1 because it was prepared on December 13, 2010 and because Ecology asserts that Item 1 is irrelevant. Ecology has no objection to supplemental items 2, 3, and 4.

II. DISCUSSION

RCW 36.70A.290(4) provides:

1 The board shall base its decision on the record developed by the city, county,
2 or the state and supplemented with additional evidence if the board
determines that such additional evidence would be necessary or of substantial
assistance to the board in reaching its decision.

3 Generally, a Board will review only the record developed by the city, county, or state
4 in taking the action that is the subject of review by the Board. WAC 242-02-540. In
5 determining whether supplemental evidence should be added to the record, the
6 Board itself must find that the "additional evidence would be necessary or of
7 substantial assistance to the board in reaching its decision." In actual practice, only
8 in very limited situations will this Board allow such evidence.

9 In examining proposed supplemental evidence, we look to both the relevance of the
10 proposed evidence and its reliability. The party offering the evidence must be able
11 to show that the evidence will help illuminate the issues before the board. Second,
12 the evidence must be of a nature that the board can rely on to be objective and
13 trustworthy. Even if relevant to an issue before the board, evidence will not be
14 admitted if it is mere opinion or argument. As a general proposition the Board
15 rejects proffered supplemental evidence compiled after the decision of the local
government has been made.

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17 Petitioners' Motion to Supplement the Record with Item 1 (John P. Buchanan, Ph.D,
18 Technical Memorandum to John Pilcher, dated December 13, 2010) is **denied**. The
19 Board determines that this technical memorandum postdates the challenged
20 governmental action, and has uncertain reliability, objectivity, and relevance to
21 specific legal issues in the case. Therefore, Item 1 would not be of substantial
assistance to the Board in reaching its decision.

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23 Petitioners' Motion to Supplement the Record with Items 2, 3, and 4 is **granted**. The
24 Board finds that Items 2-4 would be of substantial assistance to the Board in
reaching its decision.

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III. ORDER

After reviewing the briefs and considering the arguments of the parties, the Board orders that the Record be supplemented by Petitioners' supplemental Items 2, 3, and 4 as attached to or referenced in Petitioners' Motion to Supplement the Record dated December 20, 2010. The request for supplementing the Record with Item 1 is denied.

SO ORDERED this 30th day of December 2010.

Raymond L. Paoella, Presiding Officer